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COSMETOLOGY LICENSURE

House Bills 4219 and 4220 as enrolled
Public Acts 97 and 98 of 1997
Sponsor: Rep. Ilona Varga

House Committee: Regulatory Affairs
Senate Committee: Economic Development,
International Trade and Regulatory
Affairs

Second Analysis (8-18-97)

THE APPARENT PROBLEM:

Article 12 of the Occupational Code regulates the practice of cosmetology (hair care, skin care, manicuring, and electrolysis). To obtain a cosmetologist's license, a person must undergo a course of training at a cosmetological school consisting of at least 1,500 hours over a period of at least 10 months, or serve a two-year apprenticeship in a licensed cosmetology establishment. In addition, a licensing examination must be passed. A person can also become licensed as a manicurist or electrologist without obtaining a full cosmetology license, but these "subfields" must be practiced in a licensed cosmetology establishment and supervised by a person with a full cosmetology license.

Article 12 has not been substantively amended in many years, and cosmetologists and regulators say updating is necessary. For one thing, most other states issue separate "sublicenses" for the practice of skin care; people are allowed to specialize in this field, training and practicing exclusively in skin care without undergoing training in hair care and the other specialties of cosmetology. In addition, many people who specialize in "natural hair cultivation" (braiding, twisting, and the like) would like to see that field recognized as a separate licensed field of cosmetology. Further, some people would like to be able to offer skin care, manicuring, or electrology in separate establishments dedicated to those practices; current law does not allow for this.

THE CONTENT OF THE BILLS:

House Bill 4219 would amend the Occupational Code to rewrite Article 12, governing the regulation of cosmetology (MCL 339.1201 et al.), to create two new subfields within the practice of cosmetology, natural hair cultivation and skin care services, and allow separate, limited licenses to be issued for these

subfields; provide for the issuance of limited cosmetology establishment licenses, where the licensing allows only for the practice of either manicuring, skin care, or electrolysis, or a combination of these; increase, from 300 to 400, the number of hours of training required to obtain a license as a manicurist or electrologist; and create a new specialist instructor's license for each of the subfields. The bill would make many nonsubstantive changes in language and in the organization of the article, and would also make the following substantive changes:

Definitions: "Cosmetology" would be any one or a combination of hair care services, skin care services, manicuring services, or electrology. "Cosmetology establishment" would be defined as "the premises on which cosmetology or 1 or more of its services are rendered or are offered to be rendered" and would not include a school of cosmetology. "School of cosmetology" would be the premises where cosmetology or one or more of its services were taught. "Electrologist" would be an individual who renders or offers to render electrology and "electrology" would be the permanent removal of hair from an individual's body by the use of electricity. "Esthetician" would be an individual who renders or offers to render skin care services and "skin care services" would include beautifying the skin through the use of cosmetic preparations, antiseptics, tonics, lotions, or creams (including bodywrapping); cleansing or stimulating the skin by the use of the hands, devices, apparatus, or appliances, with or without using cosmetic preparations, antiseptics, tonics, lotions, or creams; the temporary removal of hair from the body by the use of depilatories, waxes, razors, scissors, clippers, or tweezers; or giving facials, applying removable makeup, applying eyelashes, or any other application of a preparation or beauty enhancement to the body of an individual (but would not include applying permanent

House Bills 4219 and 4220 (8-18-97)

makeup or the use of tanning equipment). "Hair care services" would mean a variety of techniques of work upon the hair of the head or a wig worn by a person.

An "instructor" would be defined as one who teaches or offers to teach one or more cosmetology services in a school of cosmetology. "Manicurist" would be a person who rendered or offered to render manicuring services and "manicuring services" would include various elements of nail and skin care and would include the repair of nails and creation and decoration of artificial nails (but would exclude the practice of podiatric medicine and surgery as defined in the Public Health Code, MCL 333.18001). "Natural hair cultivation" would mean techniques that result in tension on hair strands such as twisting, wrapping, weaving, extending, locking, or braiding of the hair by hand, which work would not include the application of dyes, reactive chemicals, or other preparations to alter the color or to straighten, curl, or alter the structure of the hair. A "natural hair culturist" would be a person engaged in natural hair cultivation, but would not include a person engaged in such an activity performed as part of the practice of a recognized religion.

The bill would prohibit an individual from rendering any form of cosmetology services, with or without compensation, on another individual other than a member of his or her immediate family unless licensed under Article 12 of the Occupational Code. A licensed cosmetologist could render hair care, skin care, manicuring services, and natural hair cultivation as part of the practice of cosmetology, but could not render electrology without separately being licensed as an electrologist. (As under current law, an electrologist could not render any other cosmetology service unless separately licensed to do so.) Currently, a person can obtain a license in the subfields of electrology or manicuring without obtaining a full cosmetology license. The bill would create two new subfields within the practice of cosmetology, natural hair cultivation and skin care services, and allow separate, limited licenses to be issued for these subfields.

Cosmetology establishment. The bill would permit an application for licensure as a cosmetology establishment to be submitted by either the owners or the managers of the establishment. In addition to current requirements, the application would have to include a drawing or diagram indicating both the premises to be licensed and the location of required equipment and facilities. The premises would also have to pass an inspection by an inspector from the Department of Consumer and Industry Services as to whether required sanitation and equipment standards prescribed by administrative rules had been met. Currently, a cosmetology establishment has to be separated by full partitions and doors from every other activity, business, or dwelling, but not from

a licensed barbershop or area in which clothing and accessories are sold. The bill instead would specify that a cosmetology establishment would have to be separated by full partitions and doors from a dwelling or a school of cosmetology. (Note: This provision, in conjunction with the new definition for cosmetology establishment, appears to remove the historical prohibition on activities not licensed under Article 12 of the code from being offered on the premises of a licensed cosmetology establishment. Thus, the bill could be interpreted to no longer prohibit activities not licensed by Article 12 such as tanning booths, massage, and so on.)

The bill would provide for the issuance of limited cosmetology establishment licenses, where the licensing allows only for the practice of either manicuring, skin care, or electrolysis, or a combination of these. In these establishments, the licensed subfield could be practiced without also offering full cosmetology services. Likewise, these establishments would have to be supervised by a person licensed in the particular subfield being practiced. (Natural hair cultivation would be allowed only within the larger practice of cosmetology.)

Temporary establishment licenses could be granted by the department to persons who have fulfilled all licensure requirements except for the completion of the inspection of the premises. A transfer of ownership or location of an establishment would void the license and a new license application would have to be filed that reflected the change. The establishment license and individual licenses would have to be displayed at all times in a prominent place visible to the public. A cosmetologist's individual license could be posted at his or her work station.

Cosmetology schools. In addition to current laws, an application could be submitted by either the owner or manager of a school and would have to be accompanied by a drawing or diagram that indicated the premises to be licensed, showed that the school would be partitioned from any other business, activity, or dwelling, and showed the location of required equipment and facilities. The premises would also have to pass a departmental inspection. The bill would specify that a school of cosmetology would have to teach hair care services, skin care services, and manicuring services. The department could issue a limited school of cosmetology license to a school teaching only electrology. A school teaching only electrology would have to fulfill all the requirements pertaining to cosmetology schools except that the supervisor of the school would have to be an electrology instructor, and the curriculum offered and the required equipment and facilities would be only those required for the teaching of electrology.

The bill would require that a sign be placed in each school indicating that services are rendered by students.

Instructors could not practice on the public except to demonstrate techniques to students and to correct a student's work. The school's license as well as the licenses of each of the instructors would have to be displayed prominently in a place visible to the public. Transferring ownership or location of the school would void the license; a new application would have to be filed for changes in ownership or location.

Students in a limited license curriculum could practice on the public only after having completed at least one quarter of the required hours, including both theory and practical hours.

Instructors. The bill would specify that for a license as a cosmetology instructor or electrology instructor, a person would have to be of good moral character, have a high school diploma or equivalent, and have passed an exam approved by the department and board. In addition, cosmetology instructors would have to have completed not less than 500 hours of instructor training and have at least three years of practical experience in natural hair cultivation, hair care services, skin care services, and manicuring services, one year of which would have to be in a cosmetology establishment. Electrologists would have to have at least 300 hours of instructor training and three years of practical experience, one year of which would have to be in a limited license cosmetology establishment.

In addition, the bill would create a limited instructor's license and a new specialist instructor's license for each of the subfields. A limited instructor's license for cosmetology or electrology could be issued to an individual who met licensing standards except for the required three years of practical experience. A limited specialist's license would be issued to an individual who was of good moral character, had a high school diploma or equivalent, passed an exam approved by the department and the board, was licensed as a manicurist, natural hair culturist, or esthetician, and had completed at least 300 hours of instructor training. A person with a limited specialist's license could teach only the service for which he or she were licensed.

Manicurist and electrologist licenses. The bill would increase, from 300 to 400, the number of hours of training required to obtain a license as a manicurist or electrologist. In addition, in lieu of the 400 hours of training, an applicant for a license as an electrologist or a manicurist could complete a six-month apprenticeship in a licensed cosmetology establishment where electrology or manicuring services, respectively, are offered instead of studying for one year under a licensed electrologist, or licensed manicurist or cosmetologist as current law provides. The training would have to include a minimum number of practical applications as required by rules.

Esthetician licenses. Beginning 12 months after the bill's effective date, the department would have to issue an esthetician license to a person who:

- *Was at least 17 years old.
- *Was of good moral character.
- *Had education equivalent to completion of the ninth grade.
- *Had completed at least 400 hours of training in a licensed cosmetology school or as an apprentice for not less than six months in a licensed cosmetology establishment where skin care services were rendered. The training would have to include a minimum number of practical applications as required by rules.
- *Had passed an exam approved by the department and the Board of Cosmetology (if available).

For one year after the bill's effective date, the department would have to issue a license to a person meeting the above requirements except that instead of the required 400 hours of training, the person would have to provide evidence of having obtained the equivalent of six months of full-time experience in skin care services in- or out-of-state within the preceding 12 months.

Natural hair culturist license. Until December 31, 1999, the department would have to issue a natural hair culturist license to a person who:

- *Was at least 17 years old.
- *Was of good moral character.
- *Had education equivalent to completion of the ninth grade.
- *Had passed an exam approved by the department and the board (if available). In lieu of an examination being available, the department would have to evaluate the experience of an applicant (the experience would have to include at least six months of field practice or experience).

Beginning January 1, 2000, in addition to the requirements above, a person would also have to either 1) complete at least 400 hours of training over a three-month period in a department-approved licensed cosmetology school where natural hair cultivation services were rendered, or 2) serve as an apprentice for not less than six months in a licensed cosmetology establishment where natural hair cultivation was practiced. Further, the bill would specify that a person could practice natural hair cultivation for compensation

and operate an establishment where only natural hair cultivation was practiced without being licensed under the bill.

Miscellaneous provisions. The director of the Department of Consumer and Industry Services would have rule-making authority instead of the department and the Board of Cosmetology (in accordance with ERO 1996 -2). Further, current law prohibits practicing cosmetology on the public outside of a licensed cosmetology establishment or school of cosmetology. The bill would provide an exception to this provision. It would allow a licensed cosmetologist to serve a patron outside of a licensed cosmetology establishment in connection with a special event, where the cosmetology service is rendered on the site of the event to a participant in the event. Further, during departmental inspections, a person could be required to present identification to verify that he or she is the person identified in a posted license.

House Bill 4220 would amend the State License Fee Act (MCL 338.2225) to add several license fees for the new subfields of cosmetology that would be established under House Bill 4219. The license fees for estheticians (skin care specialists) and natural hair culturists would be the same as those in current law for cosmetologists, manicurists, and electrologists. The fees are:

C Application processing fee	\$10
C Examination fee	\$25
C Annual license fee	\$12

Tie-bar. House Bills 4219 and 4220 are tie-barred to each other.

BACKGROUND INFORMATION:

House Bills 4219 and 4220 are nearly identical to legislation introduced in the 1995-96 legislative session (House Bills 4798 and 4799). Those bills passed the House and the Senate but were not ordered enrolled.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, no net fiscal impact would be expected for the Department of Consumer and Industry Services since the amount of revenue generated by the licensing fees of the new subfields should be roughly equal to the cost increase associated with processing the new license applications and exams. There would be no local fiscal impact. (7-15-97)

The Department of Consumer and Industry Services reports that the most significant costs would be associated with the development of subfield examinations, modifications to specialty instructor examinations, and the required annual inspections of an increased number of limited service cosmetology establishments. (8-1-97)

ARGUMENTS:

For:
The bill would rewrite the cosmetology article of the Occupational Code to update and reorganize its major provisions, and would make several important substantive changes. Under the bill, those who specialize in cosmetology subfields, such as skin care, manicuring, and electrology, would be given added flexibility to practice in settings other than full cosmetology establishments. Thus, a free-standing manicuring, skin care, or electrology salon could be licensed and operated in Michigan. According to the Department of Consumer and Industry Services, there are approximately 1,500 unlicensed nail care salons and an unknown number of electrology salons that would be affected by the legislation. Since the improper sterilization of equipment used for manicures and pedicures can contribute to the spread of infectious blood-borne diseases such as hepatitis, these salons should be licensed and inspected regularly.

Also, skin care specialists ("estheticians") would be recognized and licensed separately, so those wishing to specialize in this practice could take separate training and obtain a license to practice in this area, without having to take the full cosmetology curriculum. Finally, natural hair cultivation would be recognized as a cosmetology subfield, and someone could take training limited to this area, including braiding, twisting, etc., and not have to take the entire cosmetology course in order to practice. These changes would serve to update the regulation of cosmetology in Michigan to reflect trends in the industry, and practices in many other states.

Response:
While it is true that House Bill 4219, in addition to the new changes noted above, would primarily serve to update the cosmetology law to reflect current practices and industry trends, the bill would also make another substantive change. Historically, licensed cosmetology salons have only been allowed to offer services that are regulated under the cosmetology laws (an exception for the sale of clothing and accessories had been granted by statute). However, the bill, in updating the definition of cosmetology establishment and deleting language requiring that cosmetology establishments be partitioned off from every other activity, would apparently inadvertently delete the prohibition from activities not

licensed under the cosmetology article of the Occupational Code from being offered. This could be interpreted to mean that cosmetology shops could now offer services previously prohibited such as tanning booths, massage, sales of dietary supplements, and so on. Further, since the bill creates an optional license for natural hair culturists, it could be argued that if unlicensed activities would now be permitted in licensed salons, then an unlicensed braider should be able to work in a licensed or unlicensed shop. Reportedly, according to a representative of the Department of Consumer and Industry Services, the department intends to enforce the bill according to what is believed to be the intent of the language, and so would move to have any unlicensed braiders in a licensed shop obtain a limited license as a natural hair culturist. Yet, according to a departmental analysis of the bill, the "optional licensure" for braiders is seen as creating a practical problem of discerning whether services in a licensed cosmetology shop are being offered by unlicensed persons. In addition, the department reports that the provision for optional licensure "may conflict with the purpose of licensure, which is defined by the Occupational Code as a document which permits a qualified individual to practice an occupation for which practice without a license is unlawful." Perhaps the language should be amended to better reflect the historical practice of prohibiting non-cosmetology related activities from being offered in a licensed cosmetology salon and to avoid unnecessary confusion and possible litigation that could arise under the bill's wording.

In a similar manner, in updating the licensing requirements for instructors of electrology to reflect the creation of limited license cosmetology shops that only offer electrology, the bill would require that one year of the three required years of practical experience in electrology be in such a limited license establishment. This could be interpreted as meaning that an electrologist with many years of experience in a full service cosmetology establishment offering electrology could not obtain licensure as an electrology instructor unless he or she sought employment for one year in a limited license shop.

Against:

Under House Bill 4219, natural hair cultivation (hair braiding) and skin care would be created as subfields. The bill would allow the subfields of skin care, manicuring, and electrology to have separate licensed establishments, where only that one particular service would be offered, but would restrict the practice of hair braiding by licensed braiders to full-service cosmetology establishments. Though the bill would allow unlicensed braiders to operate unlicensed shops, many feel that braiders should be afforded the same treatment as the three other subfields and be permitted to operate

licensed businesses where only braiding is offered. Though some maintain that since braiding is a hair service it should only be offered in a cosmetology establishment, others feel strongly that since braiders do not cut, color, perm, or even wash hair, there is no logical reason why braiding should be treated differently than the other subfields and denied separate licensed establishments. Further, to permit braiders to operate their own shops, including both unlicensed and limited license establishments, would enable small businesses to open in areas where a full-service cosmetology establishment might not exist, thus providing better access and choice to service for customers.

Against:

Instead of expanding and revising these occupational licenses, some would argue that the state should deregulate these practices altogether. Occupational licensing generally serves more to erect economic barriers to the professions than it does to protect the public. Many would argue that the marketplace could easily regulate itself in this particular case.

Response:

In the case of licensing establishments and individuals providing the various services regulated under the cosmetology laws, the public is indeed served. Many harsh chemicals and preparations are used that could seriously injure a patron if not applied properly. Even hair braiding, though not using chemicals or procedures to alter the structure of hair, can result in hair breakage and hair loss if the techniques involved are not done properly or if the braider lacks the knowledge of how previously chemically-treated hair can respond to braiding. As to nail care salons, health professionals have sent out warnings for several years that improperly sterilized equipment used for manicures and pedicures have been responsible for spreading hepatitis and other blood-borne infections and could in theory result in HIV infection. The licensing requirements and departmental inspections do therefore work toward minimizing potential injuries to the public by maximizing proper training and sanitation.

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